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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION 2

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES FULLER,

Defendant and Appellant.

A142919

(Contra Costa County
Super. Ct. No. 51325794)

Based on evidence discovered in a warrant search of his home, defendant Charles Fuller was arrested for possessing marijuana for sale. He moved to unseal the affidavit supporting the search warrant, traverse and quash the warrant, and suppress the evidence recovered during the search. Following the court's in camera review of the affidavit and the prosecutor's examination of the deputy sheriff who provided the affidavit, the court denied defendant's motion. Defendant was subsequently convicted by a jury of possessing marijuana for sale.

Pursuant to *People v. Hobbs* (1994) 7 Cal.4th 948 (*Hobbs*), defendant now asks this court to review the sealed portion of the search warrant and the transcript of the hearing on his motion to determine whether the trial court erroneously denied his motion. The Attorney General agrees that our independent review of the sealed material is appropriate. Having conducted our review, we find no error or abuse of discretion, and we affirm the judgment.

BACKGROUND

The Search

The facts as adduced at trial are not relevant to our review of the pretrial rulings. We therefore set them forth here with brevity.

On October 18, 2012, deputies from the Contra Costa County Sheriff's Department executed a search warrant for the premises at 2317 Manzanita Way #B in Antioch, any vehicle in the immediate vicinity of the Manzanita Way premises that was in defendant's custody or control, a black Saab bearing a specific California license plate number, and defendant.

The deputies found an approximately one-ounce bag of marijuana and another bag that contained baggies of marijuana and some loose marijuana in defendant's bedroom; two digital scales (one of which bore a slight residue) and a box of plastic bags in the kitchen; a grocery bag that contained a large plastic bag with nine one-ounce bags of marijuana inside it in the black Saab parked in front of the house; and a cardboard box containing a large bag of marijuana shake and a dog carrier containing another bag of marijuana in the garage. The combined marijuana, including packaging, weighed 507.3 grams, enough to last a heavy user 253 days.

After defendant was *Mirandized* (*Miranda v. Arizona* (1966) 384 U.S. 436), he made numerous admissions. He acknowledged there was about an ounce of marijuana in a drawer in his bedroom, claiming he had found the package in the park the previous night. He said he was having financial problems, and a friend in San Francisco had given him marijuana to sell for a profit. He also said the marijuana shake had been in the garage for years and he had forgotten about it, but he claimed to know nothing about the marijuana in the dog carrier.

The Warrant

The affidavit in support of the warrant was a five-page document by Deputy Sheriff Scott Wooden, with one page sealed to protect the identity of a Confidential Reliable Informant (CRI). In the unsealed portion, Deputy Wooden stated the following:

“Within the last 30 days, the Affiant received information from a Confidential Reliable Informant (CRI) that a subject by the name of Charles Fuller is illegally selling marijuana from the residence located at 2317 Manzanita Way #B, Antioch Ca 94509. The Affiant showed the CRI a photograph of Charles Fuller and he/she positively identified the photograph as the male subject who is selling marijuana from the residence at 2317 Manzanita Way #B, Antioch Ca 94509. More specific information is contained in a sealed portion of this Affidavit.

“The Affiant wishes to keep the identity of the informant confidential because I believe that the disclosure of the informant’s identity would endanger his/her safety, in that informants have been threatened, harmed, injured and killed as a result of persons discovering their roles as police informants. I also believe that disclosure will alert those engaged in criminal activity of the identity of the informant which will jeopardize the future usefulness of the informant to Law Enforcement.

“The CRI has fears for his/her safety, therefore the Affiant is requesting that the specifics of the information provided by the CRI, that would tend to identify him/her, be sealed by the Court.”

The sealed portion of the affidavit provides an additional page of information supporting the warrant. We have independently reviewed, but cannot reveal in this opinion, the contents of the sealed portion of the affidavit.

Warrant-Related Motions and Rulings

On March 24, 2014, defendant filed a motion to quash the warrant, unseal the affidavit, and suppress evidence pursuant to Penal Code section 1538.5. Particularly, he asked the court to unseal the affidavit and disclose the identity of the confidential informant. If the informer’s privilege had been properly asserted (Evid. Code, § 1041), defendant sought disclosure of the affidavit in redacted form. He additionally requested that the court then independently investigate whether the warrant should be traversed or quashed and any seized evidence not supported by probable cause suppressed.

At a hearing on April 25, outside the presence of defendant and his counsel, the trial court considered defendant’s motion, including in camera review of the sealed page

of the affidavit and examination of Deputy Wooden. The court denied defendant's motion in its entirety, ordering the statement of probable cause resealed and the transcript of the hearing sealed.

Defendant's case subsequently proceeded to a three-day jury trial, which resulted in his conviction for possessing marijuana for sale.

Defendant was granted probation, with 120 days in county jail and credit for two days served, after which he filed this timely appeal.

DISCUSSION

The Affidavit Was Properly Sealed

Our Supreme Court in *Hobbs* has set forth a procedure by which a search warrant affidavit, or, as here, a portion of one, may be sealed to protect the confidentiality of an informant's identity: California law sanctions "sealing portions of a search warrant affidavit that relate facts or information which, if disclosed in the public portion of the affidavit, will reveal or tend to reveal a confidential informant's identity. The materials, usually sealed by the magistrate at the time the search warrant is signed and issued, are then made available for in camera review by the trial court in connection with any motion brought to challenge the warrant's validity or discover whether the informant is a material witness to defendant's guilt or innocence. [Citations.]" (*Hobbs, supra*, 7 Cal.4th at p. 963, italics omitted.)

"The court must first determine whether a valid basis exists to exclude the informational materials from the 'public' portion of the search warrant application, i.e., determine whether disclosure of those materials would compromise the confidentiality of the informant's identity. Any portions of the sealed materials which, if disclosed, would not reveal or tend to reveal the informant's identity must be made public and subject to discovery by the defense. [Citation.]" (*Hobbs, supra*, 7 Cal.4th at p. 963.)

Here, after defendant made his motion to unseal, the trial court reviewed the entire affidavit at an in camera hearing, and determined that the sealed page identifying the CRI

had been properly sealed. We have reviewed the entire affidavit, including the sealed page, and the sealed hearing transcript,¹ and we agree with the trial court.

The Motion to Traverse Was Properly Denied

Our review next reveals no error in the court’s ruling on defendant’s request to traverse the warrant. Where a defendant has moved to traverse the search warrant, and the trial court has determined that the affidavit was properly sealed, the court must then determine whether the general allegation of material misrepresentations or omissions is supported by the sealed and unsealed portions of the search warrant, as well as by any testimony given at the in camera hearing. (*Hobbs, supra*, 7 Cal.4th at p. 974.)

“Generally, in order to prevail on such a challenge, the defendant must demonstrate that (1) the affidavit included a false statement made ‘knowingly and intentionally, or with reckless disregard for the truth,’ and (2) ‘the allegedly false statement is necessary to the finding of probable cause.’ (*Franks[v. Delaware]* (1978) 438 U.S. 154,] 155–156.)” (*Hobbs, supra*, 7 Cal.4th at p. 974.) Neither the public part of the affidavit nor the sealed portion nor Deputy Wooden’s testimony at the hearing raises a suggestion of a material misrepresentation or omission by the deputy.

The Affidavit, in its Entirety, Establishes Probable Cause to Search

Finally, we consider defendant’s motion to quash for lack of probable cause. “[I]f the affidavit is found to have been properly sealed and the defendant has moved to quash the search warrant (Pen. Code, § 1538.5), the court should proceed to determine whether, under the ‘totality of the circumstances’ presented in the search warrant affidavit and the oral testimony, if any, presented to the magistrate, there was ‘a fair probability’ that contraband or evidence of a crime would be found in the place searched pursuant to the warrant. [Citations.]” (*Hobbs, supra*, 7 Cal.4th at p. 975.)

¹ The sealed page of Deputy Wooden’s statement of probable cause and the transcript of the hearing on defendant’s motion were not part of the record on appeal. We requested augmentation of the record to include them, and they are filed in this court under seal.

The basic standard for probable cause to issue a search warrant is “whether, given all the circumstances set forth in the affidavit . . . , there is a fair probability that contraband or evidence of a crime will be found in a particular place.” (*Illinois v. Gates* (1983) 462 U.S. 213, 238.) Probable cause is not measurable by formulas; rather, its existence depends on the totality of the circumstances. (*Id.* at p. 238.) We overturn the lower court’s determination to issue a search warrant only if the affidavit upon which it is based fails as a matter of law to set forth sufficient competent evidence to support the magistrate’s probable cause finding. (*People v. Butler* (1966) 64 Cal.2d 842.) Moreover, the affidavit carries with it a presumption of validity. (*Franks v. Delaware, supra*, 438 U.S. at p. 171.) Courts resolve doubtful or marginal cases in favor of the warrant (*United States v. Ventresca* (1965) 380 U.S. 102, 109), but must review the sufficiency of affidavits conscientiously to ensure that the magistrate had sufficient information and did not merely ratify the bare conclusions of others. (*Illinois v. Gates, supra*, 462 U.S. at p. 239.)

Our independent review of the record, including the sealed portions, confirms the trial court’s determination that under the totality of the circumstances there was probable cause to issue the search warrant.

DISPOSITION

The judgment is affirmed.

Richman, Acting P.J.

We concur:

Stewart, J.

Miller, J.